

**United States**  
**COURT OF APPEALS**  
**for the Ninth Circuit**

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NEW YORK LIFE INSURANCE COMPANY,  
a corporation,

*Appellant,*

vs.

ARTHUR L. LEE and FLORENCE GRUSEN-  
MEYER, Formerly Florence Lee,

*Appellees.*

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**APPELLANT'S BRIEF**

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APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON

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**MAR 25 1955**

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**JURISDICTIONAL STATEMENT**

The New York Life Insurance Company, a corporation, organized and existing under and by virtue of the laws of the State of New York commenced this action of interpleader in the United States District Court for the District of Oregon. The action was commenced against Arthur L. Lee and Isabel Clark, citizens of the State of Oregon, and Florence Grusen-

meyer, formerly Florence Lee, a citizen of the State of California.

The interpleader was predicated upon a policy of life insurance issued by appellant upon the life of appellee, Arthur L. Lee. The complaint alleged that each of the defendants, Arthur L. Lee and Florence Grusenmeyer, claimed that he or she was the only person entitled to the proceeds of the policy and that the defendant, Isabel Clark, claimed some right, title and interest in the policy. Simultaneously with the commencement of the action appellant paid into the registry of the District Court the sum of \$1,711.25. The amount in controversy exceeds the sum of \$500.00.

Jurisdiction of the District Court existed by virtue of the amount in controversy and the diversity of citizenship between the appellee, Arthur L. Lee, and appellee, Florence Grusenmeyer, both of whom claimed the fund deposited in the Registry of the Court (Title 28, Sec 1332 (a) (1) and Sec 1335 (a) (1), United States Code).

Judgment was entered on November 15, 1954, dismissing the action and ordering the Clerk of the District Court to return to appellant the sum previously deposited in the Registry of the Court. Thereafter, on December 14, 1954, appellant filed notice of appeal from said judgment and final order.

This Court has jurisdiction by virtue of Sec 1291, Title 28, United States Code.

## STATEMENT OF THE CASE

### THE ISSUES

Appellant in its statement of points sets forth five issues which, for purposes of simplicity and clarity, are reduced to the following specifications of error.

1. The District Court erred in failing to find and hold that there was a valid basis for interpleader. (This specification covers point 1, R. 73.)

2. The District Court erred in dismissing appellant's action of interpleader and in failing to find that there were two adverse claimants to the fund and in failing to make an order requiring the adverse claimants to interplead their respective claims to the fund and ordering appellant discharged from all liability. (This specification covers points 2, 3 and 4, R. 73.)

3. The District Court erred in holding that interpleader could not be maintained upon the ground that if such relief were granted plaintiff, defendant, Arthur L. Lee, would be deprived of attorneys' fees in an action pending in a Court of the State of Oregon. (This specification covers point 5, R. 74.)

### NARRATIVE STATEMENT

On November 16th, 1915, appellant issued its policy of ordinary life insurance, Number 4860276 (R. 59) to the appellee, Arthur L. Lee, insuring his life in the sum of \$3,000.00. The policy reserved to the insured the unqualified right to change the beneficiary. The

policy further provided that after two full annual premiums had been paid, the insured could within three months after any default in payment of premiums surrender the policy and receive its cash surrender value. The policy contained a table for the computation of the cash surrender value.

On or about the 31st day of July, 1926, the appellees, Arthur L. Lee and Florence Grusenmeyer, were married in the State of Nevada. Florence Grusenmeyer had previously been married to a Frank E. Travers, and an interlocutory decree of divorce had been granted to her in a suit brought by her against him on July 27, 1925. A final decree of divorce in that suit was granted on September 1, 1926, and entered of record on September 3, 1926 (R. 69). During the period, September 22, 1926, to May 27, 1932, Florence Grusenmeyer was the designated beneficiary of the policy. For some time after the 31st day of July, 1926, the defendants, Arthur L. Lee and Florence Grusenmeyer, then known as Florence Lee, lived together as husband and wife in the State of California (R. 21).

Some time thereafter Arthur L. Lee commenced a suit in a Circuit Court of the State of Oregon seeking an annulment of the marriage. Florence Grusenmeyer was not personally served with summons and complaint, and service upon her was had by publication. On January 25, 1934, a decree was entered in that suit declaring the marriage null and void from the beginning. This decree did not determine any property rights between the parties (R. 22).

On December 1, 1952, the policy of insurance had a cash surrender value of \$1,711.25 (R. 23), and on or about December, 1952, appellee, Arthur L. Lee, demanded the cash surrender value from the appellant. Prior to that time appellee, Florence Grusenmeyer, had advised appellant that she claimed an interest in the policy (R. 54). Appellant advised appellee, Arthur L. Lee, that it could not pay the cash surrender value to him unless Florence Grusenmeyer consented thereto. The insured made no further payment of premiums, and in due course the appellant notified the insured that the policy, in accordance with its terms, had been converted to extended insurance, which had no cash value.

On May 4, 1953, Appellant, Arthur L. Lee, commenced an action in the Circuit Court of the State of Oregon for the County of Multnomah seeking the recovery of the cash surrender value with interest and attorneys' fees (R. 24). On July 14, 1953, appellant commenced this action of interpleader in the United States District Court for the District of Oregon, naming as defendants, Arthur L. Lee, the insured, Florence Grusenmeyer, and Isabel Clark, the one named as beneficiary at the time the insured demanded the cash surrender value.

Florence Grusenmeyer appeared in the interpleader, consented to the allowance of interpleader and claimed an interest in the cash surrender value (R. 16). The insured, Arthur L. Lee, appeared and denied that it was a proper case for interpleader (R. 8). Isabel Clark

did not appear, and an order of default was entered against her. The action progressed to a pre-trial conference, and the Court ordered the parties to proceed with the pre-trial conference upon the segregated issue for the purpose of determining if the suit for interpleader may be maintained. After a trial on that issue the aforementioned judgment and order (R. 41) were entered, and this appeal followed.

### **SPECIFICATIONS OF ERROR**

1. The District Court erred in failing to find and hold that there was a valid basis for interpleader. (This specification covers point 1, R. 73.)

2. The District Court erred in dismissing appellant's action of interpleader and in failing to find that there were two adverse claimants to the fund and in failing to make an order requiring the adverse claimants to interplead their respective claims to the fund and ordering appellant discharged from all liability. (This specification covers points 2, 3 and 4, R. 73.)

3. The District Court erred in holding that interpleader could not be maintained upon the ground that if such relief were granted plaintiff, defendant, Arthur L. Lee, would be deprived of attorneys' fees in an action pending in a Court of the State of Oregon. (This specification covers point 5, R. 74.)

## ARGUMENT

### A Valid Basis for Interpleader Exists

The statute giving the United States District Courts original jurisdiction of actions of interpleader or in the nature of interpleader sets forth three basic requirements which must be met in order to maintain the action. These requirements are:

1. The amount in controversy must equal \$500.00 or more.

2. Two or more adverse claimants of diverse citizenship are claiming or may claim to be entitled to the money or property or claiming one or more of the benefits arising by virtue of any note, bond, certificate, policy, instrument or by virtue of any obligation.

3. The plaintiff in interpleader has deposited the money or property into the registry of the Court to abide the judgment or has been given an appropriate bond conditional upon compliance by plaintiff with the future order or judgment of the Court (Title 28, United States Code, Sec 1335).

Appellant, simultaneously with the commencement of this action, paid into the registry of the District Court the cash surrender value of the policy, being the sum of \$1,711.25. This fact alone establishes that requirements one and three, set forth above, have been met.

The only remaining requirement is whether there were two or more claimants of diverse citizenship. The

diversity of citizenship between appellees, Lee and Grusenmeyer, is established (R. 18).

Prior to the institution of any litigation concerning the life insurance policy, appellee, Florence Grusenmeyer, had by notice in writing informed appellant that she claimed some interest in the policy (R. 54). At the time the insured made demand for the cash surrender value, appellant was on notice that Grusenmeyer claimed an interest in the policy. Thus at the time the action was commenced the appellant was faced with two conflicting claims to the benefits arising from the policy.

Counsel for the appellee, Lee, submitted to the Court a proposed finding of fact that Florence Grusenmeyer had no interest in the proceeds of the policy, and that appellant knew that any claim asserted by her was sham and frivolous at the time the interpleader was commenced. This finding the trial Court refused to make (R. 39).

The State Court could not have obtained jurisdiction of Florence Grusenmeyer in the action commenced by appellee Lee against appellant in the Oregon State Court and the State could well have dismissed the action on the grounds that it did not have jurisdiction to render a decision binding upon all the necessary parties.

There being two adverse claimants of diverse citizenship, both claiming the fund deposited in the registry of the Court, the interpleader was clearly maintainable.

In *Metropolitan Life Insurance Company vs. Mason et al*, 98F2d 668 (3rd Cir.) the insured brought action to recover the cash surrender value of two policies issued by the insurer in a municipal Court of Philadelphia. Thereafter, one, Nance Mason, notified the insurer that he was the owner of the policies and that the insured took the policies from him without permission. He requested the insurer to make no payments to the insured. Faced with these conflicting claims, the insurer filed an action of interpleader in the U. S. District Court. The trial Court dismissed the action on the ground that the claimants were not claiming the same thing; one defendant claimed a benefit under the policy and the other the right of possession of the policy (*Metropolitan Life Insurance Company vs. Mason*, 21F Supp 704). The Court of Appeals reversed the District Court, pointing out that both defendants claimed ownership of the policies, and that ownership of the policies was the issue to be decided and that such decision should be made in the interpleader action. The Court held that the purpose of the interpleader statute was to afford two-fold broad equitable relief, First, to relieve a disinterested stakeholder from present litigation, and Secondly, to forestall future litigation by adjudicating all claims in one suit.

The facts of the *Mason* case are in some respects analogous to the facts in the instant case. There the insured instituted an action to recover the cash surrender value in a local court. After that action was commenced, a non-resident third party notified the

insurer that he claimed some interest in the policy. The insurer confronted with these conflicting claims filed an action of interpleader in a District Court of the United States just as appellant did in the instant case. In both cases the only action available to settle all questions in a single adjudication was an action of interpleader under the Federal Interpleader Statute because the claimants being of diverse citizenship, only the Federal Court would obtain jurisdiction over all claimants. The Mason case properly gives a liberal construction to the Federal Interpleader Statute. That such construction is proper, see *Hartford Fire Insurance Company vs. Sanders* 38F 2d 212.

The Circuit Court of Appeals, Eighth Circuit, has adequately expressed the rule regarding when an action of interpleader may be maintained. In *Hunter vs. Federal Life Insurance Co.* 111F 2d 551, in an opinion by Judge Sanborn the Court stated: "The jurisdiction of a Federal Court to entertain an action of interpleader is not dependent upon the merits of the claims of the various claimants." (See also *Metropolitan Life Insurance Company vs. Segartis* 20F Supp 739.) "It is our opinion that a stakeholder, acting in good faith, may maintain a suit in interpleader for the purpose of ridding himself of the vexation and expense of resisting adverse claims even though he believes that only one of them is meritorious."

Appellant commenced this action of interpleader to secure in a single controversy an adjudication binding on all the parties, and to relieve itself of the neces-

sity of defending two or more suits concerning the same subject matter. Prior to the commencement of the interpleader, appellant was on notice that there were two adverse claimants. Appellant was also on notice that these adverse claimants had entered into a marriage ceremony and had lived as husband and wife for a number of years in a community property state. Having knowledge of these facts and confronted with two adverse claims, appellant commenced this action of interpleader. This was the only course by which appellant could in a single controversy obtain an adjudication binding on all of the claimants.

### **There Are Two Adverse Claimants to the Fund Deposited in the Registry of the Court**

Appellee, Lee, the insured in the policy, obviously had an interest in the fund. If the appellee, Grusenmeyer, had some realistic promise upon which to base her claim, then the existence of adverse claimants is established. That she actually did claim an interest is established beyond dispute. She twice communicated with appellant in writing, each time claiming some interest in the policy (R. 54-55). After service of summons and complaint in the interpleader action, she appeared and answered, claiming the entire fund deposited in the registry of the Court (R. 16).

The Findings of Fact made by the trial Court includes a finding that the appellees, after joining in a marriage ceremony, resided for some time in a community property state (California) (R. 21).

While so residing, the insured continued to pay the premiums on the policy here in issue. These payments were made with funds presumably community property. 11 Am Jur Community Property Sec 41, Re Ppper 158 Cal 619. The earnings of either spouse during marriage are presumed to be community property, 11 Am Jur Community Property Sec 34, Odone vs. Marzocchi 34 Cal 2d 431, 211 P2d 297, 17 ALR 2d 1104 rehearing denied 212 P2d 233. The effect of these presumptions establishes that premiums during this period were paid with community property.

Having established that a portion of the premiums on the instant policy were paid with community funds in California, the next logical issue to determine is what rights did such payment create in the members of the community. The California decisions establish that payment of premiums on a life insurance policy with community property makes the chose in action represented by the policy community property. The leading California case on the subject is New York Life Insurance Company vs. Bank of Italy 60 Cal App 602, 214 Pac 61. In the Bank of Italy case the premiums paid on the policy were paid entirely with community funds, and it was held to be community property. The Bank of Italy case is the subject of comment in 114 ALR at Page 546, and it has been consistently followed in subsequent decisions of the California Courts, Dixon Lumber Co. vs. Peacock 217 Cal 415, 19 P2d 233, Travelers Insurance Co. vs. Fancher 219 Cal 351, 26 P2d 482 and McBride vs. McBride 11 Cal App 2d 521, 54 P2d 480.

If the policy of life insurance is issued prior to the marriage of the parties and premiums after marriage are paid with community funds, the portion of the proceeds representing the proportion of the total amount of premium paid with community funds constitutes community property, and the balance is separate property of the husband. *Modern Woodman of America vs. Gray* 113 Cal App 729, 299 P 754. Upon death of the insured, where the policy names someone other than the spouse as beneficiary and all the premiums are paid with community funds, then the proceeds are divided equally between the beneficiary and the surviving spouse. If only a portion of the premiums are paid with community funds, then the portion of the proceeds corresponding to the total amount of premiums which was paid with community funds would be considered community property.

The rights of the parties to a California community are just as fixed if the marriage is terminated by divorce or other judicial separation as they are when the marriage is terminated by death.

In *Gefland vs. Gefland* 29 P2d 271 the facts were somewhat analogous to those in the case at bar. The parties were married and accumulated considerable property in the State of Maryland. Thereafter they acquired a domicile in the State of California. Included in the property acquired before moving to California were certain life insurance policies payable to named beneficiaries other than the wife. While the parties were domiciled in California, premiums on these poli-

cies were paid out of community funds. The wife brought suit for divorce and an award of community property. The trial Court made a finding that the parties had no community property and made no award to the wife. From this portion of the decree the wife appealed. In the District Court of Appeals the Court held that, while the wife upon divorce no longer had any insurable interest in the life of her former husband, she had a right to claim her interest in any property which was used to pay premiums. The Court held that, where the husband used community funds to pay premiums on life insurance of which the wife was not the beneficiary, the community was entitled to be reimbursed. The Court reversed that portion of the decree appealed from holding that the Court below should order the husband to make reimbursement out of his separate funds to prevent the community rights of the wife from being impaired. In the instant case the husband designated someone other than the wife beneficiary prior to the termination of the marriage (R. 37-62).

In the annulment suit brought by appellee, Lee, against the appellee, Grusenmeyer, no adjudication of any property rights was sought or made. (R. 36 Findings of Fact XIV.) The decree annulling the marriage of the parties has no effect on the community property rights of the parties existing at the time and is no bar to the present assertion of property rights in this action by appellee, Grusenmeyer. *Tarien vs. Katz* 216 Cal 554, 15 P2d 493. No property rights having been adjudicated in the proceeding terminating the mar-

riage, such rights may be litigated in a subsequent proceeding. *Tarien vs. Katz supra*, *Taylor vs. Taylor* 192 Cal 71, 218 P 756, 51 ALR 1074, *Coats vs. Coats* 160 Cal 671, 118 P 441. See further 11 Am Jur Community Property Sec 76 and 3 Cal Jur. Ten year Supp p 673.

From the evidence introduced in the Court below it was established that the appellee, Grusenmeyer, lacked capacity to contract a valid marriage at the time she and appellee, Lee, entered into the marriage ceremony (R. 35). This lack of capacity was occasioned by the fact that only an interlocutory decree of divorce had been entered in the suit brought to terminate her previous marriage (R. 69). A final decree was not entered until after the marriage of the appellees. The California decisions are uniform in holding that such lack of capacity does not deprive a defacto spouse of her rights in property acquired during the existence of the putative marriage.

In the early California case of *Coats vs. Coats* 160 Cal 671, 118 P 441, rehearing denied 118 P 445, the facts were these: The wife at the time she entered into the marriage was physically incapable of entering into marriage. Subsequently an annulment of the marriage was decreed as a result of a suit brought by the husband. No property rights were adjudicated in the annulment proceeding. From the date of the marriage ceremony to the annulment considerable property was accumulated by the parties. The services rendered by the wife in accumulation of this property were of no

pecuniary value. After the entrance of the decree of annulment the wife brought this action for a division of the properties accumulated by the parties during the period of time the marriage relationship existed. The trial Court awarded a sum of money to the wife, and an appeal followed.

The appellate Court affirmed the Court below, pointing out that until the making of the annulment decree the marriage was valid, and the property in issue was impressed with a community character. The Court stated that upon annulment such property, even though it is no longer community property, should be divided as community property upon death or divorce. The Coats case announces the rule that a person under some disability when entering into a marriage in good faith shall have the same rights in property accumulated during the existence of the marriage as he or she would have if the disability had not existed.

This decision has been consistently followed by the California Courts. These supporting decisions are all set out in 31 ALR 2d at p 1260. The more recent decision adhering to the rule is *Union Bank & Trust Co. et al. vs. Gordon* (1953) 116 Cal App 2d 681, 254 P2d 644. In the Gordon case the husband lacked capacity to contract a second marriage because a foreign divorce decree purporting to terminate his first marriage was void. Considerable property was accumulated by the husband and the alleged second wife during the time the relationship existed. Upon death of the husband the administrator brought an action to quiet title to

various parcels of real property and named both the first and second wife as defendants. They both appeared and claimed to be the sole owner of the property. The first wife asserted the lack of capacity of the husband to contract this second marriage as a bar to the second wife acquiring any interest in property accumulated during the existence of the relationship. The Court rejected the claim of the first wife and awarded all of the property in issue to the second wife. The rule announced in the early case of *Coats vs. Coats* was restated in the *Gordan* case in the following language, page 649: "On dissolution of a putative marriage property which the defacto spouse have acquired as a result of their joint efforts is to be treated as accumulation of a valid marriage." In California if a marriage is contracted in good faith and one of the contracting parties lacks capacity to contract the marriage upon annulment of that marriage the party lacking capacity is entitled to the same division of the property as he or she would have been entitled to in community property had the marriage not been subject to annulment but had been terminated by death or divorce.

While the record is silent as to the intentions of the appellees at the time they contracted the marriage, the law presumes they acted in good faith and in compliance with the law. The lack of capacity of appellee, Grusenmeyer, was occasioned by the fact that a final decree of divorce had not been entered terminating her previous marriage, and he relied on an interlocutory decree. That was the factual situation in *In Re Krone's Estate*, 83 Cal App 766, 189 P2d 741. There the wife

contracted marriage with Krone's shortly after an interlocutory decree had been entered and some ten months before a final decree of divorce was entered. The Court followed the rule previously announced herein and awarded all of the property to the defacto spouse and denied relief to children of the decedent by a previous marriage.

In the instant case the claim of the appellee, Gruenmeyer, is strengthened by the fact that payment of premiums of the policy in issue were made with funds presumably community in character. However, appellant's right to maintain the action of interpleader is not dependent upon the merits of the adverse claims. (See Metropolitan Life Ins. Co. vs. Segartis *supra*.)

Here a former defacto wife of the insured asserted a claim adverse to that of the insured and claimed an interest in the policy and claimed the funds paid into the registry of the Court. At the time the action of interpleader was commenced appellant was faced with two conflicting claims to all or part of the benefits accruing under its policy of insurance. It in good faith paid the money into the registry of the District Court in order that the respective claimants might interplead their claims to the fund on deposit. It could not without the risk of additional liability and the vexation of further litigation. So situated, appellant should have been afforded the relief contemplated by the federal interpleader statute.

## **Argument on the Issue of Attorneys' Fees**

It is apparent from the Court's Memorandum dated November 1, 1954, (R. 31) and from the findings of facts (R. 40) that the Court below in denying appellant the relief of interpleader, did so because it felt that if it allowed the interpleader, the insured would be denied the right to recover attorneys' fees under Oregon Revised Statutes 736.325. This statute has been before the Oregon Supreme Court many times and has been held to be compensatory rather than penal. *Hagby vs. Mass. Bonding and Insurance Company* 169 Ore 132, 126 P2d 836. The purpose of the statute is not to postpone litigation but to require the insurer to pay reasonable attorneys' fees to the insured for unnecessary and wrongful delay, *M. Murray vs. Fireman's Insurance Company* 121 Ore 165, 254 P 817. The Oregon Supreme Court has stated that the object of the statute is to discourage lengthy and expensive litigation and that the statute should be considered as though it were a part of the insurance contract, *Dolan vs. Continental Casualty Co.* 133 Ore 252, 289 P 1057; *Title & Trust Co. vs. U. S. Fidelity and Guaranty Company* 138 Ore 467, 1 P2d 1100, 7 P2d 805. It is obvious from the foregoing cases that the object of the Oregon statute relating to the recovery of attorneys' fees in actions on insurance policies is to encourage prompt settlement of claims without litigation wherever possible. That the insurer can not make such settlement where it is faced with conflicting and adverse claims to the policy or some of the benefits thereunder is so apparent as to need no cita-

tion of authority. Here the appellant was faced with conflicting claims and could not make a prompt, immediate settlement with the insured. Appellant, being on notice of the conflicting claims, informed the insured that it would honor his request for the cash surrender value if he would obtain the consent of Florence Grusenmeyer thereto and surrender the policy. Such a suggestion afforded the conflicting claimants an opportunity to settle the dispute among themselves and offered one means of resolving the controversy without the expense and delay of litigation.

Thereafter upon being faced with litigation in the Oregon State Court, instituted by one of the conflicting claimants, to which litigation the other claimant could not be made a party, appellant commenced this action of interpleader. As previously stated, this was the only means available to appellant to obtain in a single controversy an adjudication binding on all adverse claimants. If it is a proper case for interpleader, then there can be no issue as to the insured's right to attorneys' fees.

## CONCLUSION

It is respectfully submitted that there was a valid basis for interpleader, and appellant's action for interpleader should have been allowed, and the judgment of the District Court should be reversed and appellant granted the relief prayed for in its complaint for interpleader.

Respectfully submitted,

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